COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation by the Department of Telecommunications and Energy on its own Motion into the Appropriate Pricing, based upon Total Element Long-Run Incremental Costs, for Unbundled Network Elements and Combinations of Unbundled Network Elements, and the Appropriate Avoided Cost Discount for Verizon New England, Inc. d/b/a Verizon Massachusetts' Resale Services in the Commonwealth of Massachusetts	**D.T.E. 01-20**

CONVERSENT COMMUNICATIONS OF MASSACHUSETTS, LLC's REPLY COMMENTS TO VERIZON MASSACHUSETTS' REPLY TO THE MOTIONS FOR RECONSIDERATION AND CLARIFICATION FILED BY AT&T, WORLDCOM, THE CLEC COALITION, AND Z-TEL

Conversent Communications of Massachusetts, LLC ("Conversent") hereby submits its Reply Comments to the Verizon Massachusetts ("VZ-MA") Reply to the CLEC Coalition's Motion for Reconsideration and Clarification.[1]

I. Conversent Does Not Object to VZ-MA's Cross-Connect Rate Restructuring, but Does Object to the Application of New NRCs to Cross-Connects Previously Ordered and Provisioned.

Before discussing VZ-MA's cross-connect rate restructuring and associated transition plan Conversent believes it would be helpful to review the way that VZ-MA charges for voice grade, DS-1 and DS-3 cross-connects under its existing state and federal tariffs. It is important to understand that VZ-MA has always permitted collocating CLECs to obtain access to unbundled network elements ("UNEs"), including unbundled loops, out of state and federal collocation arrangements. In other words, a CLEC is not required to collocate under VZ-MA's state tariff in order to obtain access to UNE loops and to separately collocate under VZ-MA's federal tariff in order to obtain access to interstate special access circuits. In practice, Conversent has ordered collocation out of state and federal tariffs. Most of Conversent's 55 collocation arrangements in Massachusetts are either traditional physical collocation arrangements ordered from VZ-MA's state tariff or Secured Collocation Open Physical Environment ("SCOPE") arrangements ordered under VZ-MA's FCC tariff.

A. Existing State Physical Collocation Tariff Provisions Concerning Cross-Connects.

Under VZ-MA's current state physical collocation tariff, there is no nonrecurring charge ("NRC") for voice grade, DS-1, or DS-3 cross connects. There are tariffed recurring charges for voice grade, DS-1 and DS-3 cross-connects. Specifically, VZ-MA charges a "SAC POT Bay Termination Charge" for voice grade cross-connects of $0.08 and a "SAC Cable and Frame Termination Charge" of $0.19 (for a total monthly recurring charge of $0.27 per cross-connect).[2] The tariff makes clear that the SAC POT Bay Termination Charge applies per termination and is used for the connection of VZ-MA's POT Bay to VZ-MA's equipment location. "It is assessed on a per termination basis and is added coincident with connection of each unbundled network element to the collocation arrangement."[3] Similarly, the SAC Cable and Frame Termination Charge applies per termination and is used for the connection of VZ-MA's cables and frame terminations. As is the case with the SAC POT Bay Termination Charge, it is assessed on a termination basis and is added "coincident with the connection of each unbundled network element to the collocation arrangement."[4] The recurring SAC POT Bay Termination Charge for a DS-1 cross-connect is $0.38 and the recurring SAC Cable and Frame Termination Charge for a DS-1 cross-connect is

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[1] Conversent's decision not to address each and every argument made by Verizon in response to the CLEC Coalition's Motion should not be construed as a concession that Verizon's arguments have merit. Instead, Conversent has limited its response to the most critical issues.
[2] DTE MA No. 17, Part M, §5.2.4.
[3] DTE MA No. 17, Part E, §2.6.4.
[4] Id.

$1.43 (for a total monthly charge of $1.81 per DS-1 cross-connect).[5] The recurring SAC POT Bay Termination Charge for a DS-3 cross-connect is $0.68 and the SAC Cable and Frame Termination Charge is $28.30 (for a total monthly charge of $29.04 per DS-3 cross-connect).

B. Existing FCC Physical and Scope Collocation Tariff Provisions Concerning Cross-Connects.

VZ-MA's rate structure and rates for SCOPE arrangements (as well as for traditional physical collocation arrangements) in its existing FCC tariff differ from those in its existing Massachusetts tariff. First, for reasons that are unknown to Conversent, there are no tariffed non-recurring or recurring charges for voice grade cross-connects.[6] There are, however, both NRCs and recurring charges that apply to DS-1 and DS-3 cross-connects. Importantly, the "OCT POT Bay Termination" NRCs for DS-1 and DS-3 cross-connects are "*applied at the time of equipment installation* and only appl[y] when [Verizon] provides the POT Bay frame (emphasis added)."[7] The same is true for the "OCT Cable and Frame Termination Charge." That is, both of these cross-connect NRCs are applied at the time of equipment installation.[8] Unlike the cross-connect NRCs, the monthly recurring charges for DS-1 and DS-3 cross-connects are assessed when the terminations/cross-connects are used.[9] A true and accurate copy of VZ-MA's FCC tariff page that describes the application of these NRCs and recurring charges is attached to these Reply Comments as Exhibit 1.

C. VZ-MA Rate Restructure and Transition Plan.

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[5] DTE MA No. 17, Part M, §5.2.4.

[6] This is curious since VZ-MA permits CLECs to order UNEs under its federal collocation arrangements and installs a POT Bay in such arrangements to enable the termination of voice grade loops.

[7] Verizon Tariff FCC No. 11, §28.1.10(A)(1)(b).

[8] Verizon Tariff FCC No. 11, §28.1.10(A)(1)(c).

[9] Verizon Tariff FCC No. 11, §28.1.10(A)(2)(a, b).

Under its new rate structure, VZ-MA introduces new cross-connect NRCs and reduces some recurring charges. At the outset, Conversent must respond to VZ-MA's statement that the rate restructuring will benefit both CLECs and VZ-MA. The CLECs will benefit, according to VZ-MA "because the new recurring rates are significantly lower than the recurring rates under the prior rate structure."[10] It is true, for example, that the monthly recurring charge for a voice grade cross-connect will be reduced by about $0.19 ($19.00 per month reduction for 100 cross-connects).[11] What VZ-MA doesn't tell the Department is that the $19.00 that a physically collocating CLEC may save in recurring charges is substantially outweighed by the increase in the new NRC from $0 to $669.48 for 100 voice grade cross-connects; from $0 to $1,164.45 for 28 DS-1 cross-connects; and from $0 to $419.00 for each DS-3 cross-connect. However, this rate restructuring is not even the issue that Conversent contests. What Conversent objects to is VZ-MA's express intention to bill CLECs a new NRC for cross-connects that have already been ordered and provisioned under existing collocation arrangements, but which have not yet been put into use by the CLEC to serve customers.[12]

VZ-MA simultaneously criticizes the CLEC Coalition for not raising its objections soon enough and for raising them too soon. On the one hand, VZ-MA faults the CLEC Coalition for being silent on the new cross-connect rate structure earlier in the case and arguing later in the case that it would constitute "retroactive rate making" to assess NRCs for cross-connects that have already been ordered and provisioned. On the other hand, VZ-MA faults the CLEC Coalition for arguing *prematurely* that the "transition plan" will result in retroactive rate making because VZ-MA

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[10] Verizon-Massachusetts, Reply to the Motions for Reconsideration and Clarification Filed by AT&T, WorldCom, The CLEC Coalition and Z-Tel ("VZ-MA Reply"), p. 48.

[11] Id., footnote 20.

[12] VZ-MA also criticizes CLECs for "stockpiling" unused cross-connects . With all due respect, in the case of DS-1 loops, VZ-MA has required CLECs to order in blocks of 28, which is more than Conversent would like to

has not yet submitted its restructuring plan as part of its compliance filing. At the risk of stating the obvious, it is possible for one to be silent concerning the matter of cross-connect rate restructuring without agreeing on a transition plan that seeks to implement part of it (the NRC part) retroactively. It is also perfectly reasonable for Conversent to ask the Department to direct VZ-MA to make sure that its transition plan does not permit VZ-MA to assess CLECs a cross-connect NRC for cross-connects that have already been ordered and provisioned under existing, approved tariffs. For the reasons described below, Conversent seeks this relief.

D. VZ-MA's *Waiver* of NRCs for "Cross-Connects in Use" is Meaningless.

VZ-MA asserts that the CLEC Coalition's concerns about VZ-MA's transition plan are unfounded because it "has agreed to *waive* the NRCs for all cross-connects *in use* prior to the transition date (emphasis in original)."[13] This is tantamount to offering the sleeves off of VZ-MA's vest. There is nothing to waive. There simply are no existing, approved NRCs for cross-connects (whether they are for DS-Os, DS-1s or DS-3s) in VZ-MA's state physical collocation tariff. This is true whether the cross-connects are already in use, or for cross-connects that are going to be used by the CLEC in the future.

E. VZ-MA's Offer to Return "Unused Cross-Connects" *for Free* is a Charade.

VZ-MA goes on to state that "CLECs will have 30 days from the effective date of VZ-MA's compliance tariff to return any number of their unused cross-connects *for free*, thus avoiding any charges (emphasis in original)." Once again, the offer is a charade. The terminations/cross-connects that VZ-MA now seeks to have Conversent "return" already have been provisioned. That is, the equipment for which VZ-MA seeks to recover a NRC has already been installed. VZ's

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order. VZ-MA can address this matter in its compliance filing by reducing the minimum amount of DS-1 terminations that a CLEC must order from 28 to 1.

federal tariff for physical and SCOPE arrangements makes clear that cross-connect NRCs apply "at the time of equipment installation" as follows:

> "The OCT POT Bay Termination Charge [NRC]...is a non-recurring charge that is for the termination strip or panel that resides in the POT Bay Frame. *This charge will be applied at the time of equipment installation and only applies when the Telephone Company provides the POT Bay Frame.*
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> The OCT Cable and Frame Termination Charge...is a non-recurring charge that is for the cabling to and the termination strip or panel that resides on the Telephone Company frame. *This charge will be applied at the time of equipment installation* (emphasis added)."[14]

Clearly the cross-connect NRCs that VZ-MA is currently authorized to charge are applied at the time that VZ-MA installs the POT Bay equipment in connection with a collocation arrangement. The same rule must follow for the new cross-connect NRC in VZ-MA's state tariff. It is simply not fair for VZ-MA to install POT Bay equipment in connection with a state or federal collocation arrangement in 1999, to lawfully bill Conversent for tariffed recurring charges for cross-connects as they are used, and then in 2002, "restructure" its tariff and inform Conversent that it intends to bill Conversent a new NRC for the equipment and cabling in the POT Bay that VZ-MA installed in 1999.

Moreover, CLECs such as Conversent that are attempting to expand their customer base need *unused* cross-connects in order to be able to serve future customers. It makes no sense to require a CLEC to return unused cross-connects that have already been ordered and provisioned under existing collocation arrangements if the CLEC is going to need to turn around and reorder such cross-connects in order to be able to serve customers in the future. The primary purpose of VZ-MA's proposed requirement appears to be that VZ-MA would be permitted to charge an NRC

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[13] Id., p. 49.
[14] Verizon Tariff FCC No. 11, §28.1.10 (A)(1)(b), (c).

for returned cross-connects that are re-ordered in the future. In the alternative, VZ-MA would permit the CLEC to keep its unused cross-connects in order to serve its future customers, but it would be required to pay VZ-MA a non-recurring charge if it chooses to do so. This, too, results in a new NRC for cross-connects that have already been ordered and provisioned. The Department must prohibit VZ-MA from doing this.

F. The DTE Must Not Authorize VZ-MA to Charge New NRCs For Cross-Connects That Have Already Been Ordered and Provisioned Under State Tariff.

As stated above, VZ-MA's existing state collocation tariff does not contain an NRC for voice grade, DS-1, or DS-3 cross-connects. Typically, VZ-MA's cross-connect NRCs apply once the POT Bay equipment has been installed.[15] In contrast, recurring cross-connect charges apply when the cross-connect is put in use to serve a customer. To the extent, that Conversent has already ordered a collocation arrangement and VZ-MA has already installed the POT Bay equipment, the rate structure that was in place when these cross-connects were ordered and when the equipment was installed must remain in place. VZ-MA is simply not entitled to apply a new NRC for cross-connects that have already been ordered and provisioned under VZ-MA's existing tariffs. If, in the future, Conversent should order new cross-connects under a revised state collocation tariff, the new NRC should apply.

G. The DTE Must Not Authorize VZ-MA to Charge New NRCs For Cross-Connects That Have Already Been Ordered and Provisioned Under Federal Collocation Tariff.

In its Reply, VZ-MA states that the CLEC request for clarification that VZ-MA's rate structuring and transition plan apply only to state collocation arrangement seems "fine on its face",

[15] This is true for cross-connects ordered under VZ's traditional physical collocation arrangements and SCOPE arrangements, as specified in VZ's FCC Tariff.

but then appears to suggest that CLECs that have collocated under federal tariffs have constructively ordered cross-connects out of state tariffs.[16] VZ-MA further asserts that voice grade cross-connects are not even available under federal tariff and that the CLEC argument, if endorsed by the Department, would result in some voice grade cross-connects not being subject to any rate.

As stated above, VZ-MA's CLEC Handbook makes clear that a CLEC can obtain access to UNEs, including voice grade loops, under either a state or federal collocation arrangement.[17] A true and accurate copy of Volume III, Sections, 4.1 and 4.2 of VZ-MA's CLEC Handbook is attached to these Reply Comments as Exhibit 2. When Conversent ordered its collocation arrangements there was nothing in the CLEC handbook, nor in VZ-MA's short form collocation application, nor in VZ's FCC tariff that clearly specified that if it ordered collocation under VZ's FCC tariff it would be charged for cross-connects under VZ-MA's state collocation tariff. A sample copy of VZ-MA's short form application is attached as Exhibit 3. As a result, Conversent did not have reasonable notice at the time of application that it would be responsible for these charges.

It has always been solely within VZ-MA's right to file a tariff revision with the FCC if it wanted to be able to assess charges for voice grade cross-connects under its federal tariff. Having said that, VZ-MA is correct that granting the CLEC Coalition's Motion for Clarification that VZ-MA's rate restructuring and transition plan apply only to state collocation arrangements would result in CLECs obtaining some cross-connects for free. Conversent is not seeking free cross-connects. Indeed, Conversent begrudgingly has paid VZ-MA the *recurring charges* for voice grade cross-

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[16] VZ-MA Reply, p. 50.
[17] VZ CLEC Handbook, Volume III, §4.1, ("A single collocation arrangement may serve as the platform for interconnection to Verizon Access Services and Unbundled Network Elements ("UNEs"); §4.2, ("Once the physical interconnection is established and tested, the CLEC purchases services or UNEs from Verizon that the

connects that are set forth in VZ-MA's state collocation tariff for cross-connects that were provisioned in connection with collocation arrangements ordered under federal tariff. Even though Conversent believes that VZ-MA has failed to properly tariff these charges, Conversent has paid them. It has done so, without completely satisfying itself that such charges are authorized, because (i) Conversent does order unbundled loops that terminate in federal collocation arrangements; and (ii) because under VZ-MA's existing state collocation tariff the recurring charge applies "on a per termination basis and is added coincident with connection of each unbundled network element to the collocation arrangement." The same cannot be said for cross-connect NRCs because those charges typically apply once the POT Bay equipment has been installed and VZ-MA did not have an approved tariff provision in place to assess these NRCs when Conversent's existing collocation arrangements were provisioned.

Accordingly, Conversent only asks that the Department order VZ-MA to make sure that the transition plan in its compliance filing does not permit VZ-MA to retroactively charge NRCs for cross-connects that have already been ordered and provisioned, regardless of whether the cross connects are in use or will be put into use in the future, and regardless of whether they were previously provisioned in connection with a collocation arrangement that was ordered out of VZ-MA's state collocation or federal collocation tariff. Specifically, if Conversent has already ordered and VZ-MA has already provisioned a collocation arrangement (federal or state), and the POT Bay equipment has already been installed, VZ-MA should not be permitted to assess a new NRC for such cross-connects. To the extent that a CLEC orders and VZ-MA provisions new cross-connects under an existing or new collocation arrangement under a state or federal tariff, VZ-MA should be permitted to charge the new NRC for such cross-connects.

CLEC uses to provide services to its end-user. Physical collocation supports interconnection to voice grade,

II. The Department Failed to Consider Whether VZ-MA's Hot-Cut NRC will Provide CLECs with a Meaningful Opportunity to Compete.

In its Reply, VZ-MA indicates that as a result of the Department's adjustments, VZ-MA's proposed coordinated hot-cut rate will be cut by a factor of roughly one-half.[18] This indicates that the hot-cut NRC for the first loop will be approximately $100.00 and for subsequent loops approximately $75.00.

Conversent wants to make sure that the Department understands the math and the impact that these charges will have on the ability of facilities-based competitors to compete. Under the existing hot-cut rate of $15.26, the NRC for migrating a five-(5) line customer from VZ-MA to Conversent is $76.80 (5 lines x $15.26). If the Department does not modify its Order and does not adopt a $35.00 ceiling for the hot-cut charge, as other jurisdictions have done, the hot-cut NRC that VZ-MA will assess Conversent for the migration of the same 5-line customer will be approximately $400.00 ($100.00 for the first loop and $75.00 each for the subsequent 4 loops), an increase of over 500 percent! Conversent simply can not compete for small business customers in Massachusetts with hot-cut NRCs of this magnitude. Conversent does not believe that the Department considered this matter in its July 11th TELRIC Order.

It is true that the Department instructed VZ-MA to provide CLECs with a less costly and less manually intensive hot-cut process based on the frame-due-time process offered by SBC. Ultimately, if this process works and is priced at a rate that is at or near the $35.00 benchmark that other jurisdictions have set, the concerns that Conversent has over the fully coordinated hot-cut NRC, as a practical matter, are less problematic. Conversent stands ready to work with VZ-MA to make sure that the alternative process that VZ-MA establishes as a result of the Department's Order

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digital and optical transmission rates.").

works on a commercially reasonable basis and results in customer migrations that are as smooth as the migrations that occur today under VZ-MA's existing process. However, the Department must understand that Conversent's ability to continue to compete for small business customers in Massachusetts depends in great measure upon the availability of this alternative process being available at a rate that is at or near $35.00 and which will result in a migration that results in no or very little disruption to the end-user.

Respectfully submitted,

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[18] VZ-MA Reply, p. 41.